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**State Bar Court of California
Hearing Department
Los Angeles**

PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE OR MENTAL HEALTH ISSUES

FILED

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STATE BAR COURT
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LOS ANGELES

PUBLIC MATTER

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JUN 20 2007
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MAR 20 2008
STATE BAR COURT
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LOS ANGELES

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Bar # 213039

Case Number (s)
06-O-13474 and
07-H-10270 (cons.)

(for Court's use)

In Pro Per Respondent

Edwin Tolmas
523 W. 6th Street #625
Los Angeles, CA 90014
Tel: (213)624-4001

Submitted to: **Program Judge**

Bar # 35726
In the Matter Of:
EDWIN TOLMAS

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

Bar # 35726

A Member of the State Bar of California
(Respondent)

PREVIOUS STIPULATION REJECTED

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **June 9, 1964**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, if Respondent is not accepted into the Lawyer Assistance Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **9** pages, excluding the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".

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- (6) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline** [see standard 1.2(f)]
- (a) State Bar Court case # of prior case **04-O-14950**
- (b) Date prior discipline effective **October 21, 2005**
- (c) Rules of Professional Conduct/ State Bar Act violations: **rules 3-110(A) and 3-700(D)(2) of the California Rules of Professional Conduct**
- (d) Degree of prior discipline **Public reproof with duties**
- (e) If Respondent has two or more incidents of prior discipline, use space provided below:

In State Bar Court case numbers 89-O-16271 and 91-O-02111 (cons.), effective July 31, 1993, Respondent was disciplined for violation of former rules 2-111(A)(2), 2-111(A)(3), 6-101(A)(2), 8-101(B)(3) and 8-101(B)(4), and rules 3-110(A), 3-700(A)(2), and 3-700(D)(2) of the California Rules of Professional Conduct, and California Business and Professions Code section 6068, subdivision (m). Respondent was suspended for three years, execution of said suspension was stayed, on condition of three years of probation.

- (2) **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

None.

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

None.

ATTACHMENT TO
STIPULATION RE FACTS AND CONCLUSIONS OF LAW

IN THE MATTER OF: EDWIN TOLMAS

CASE NUMBERS: 06-O-13474 and 07-H-10270 (Consolidated)

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violating the specified statutes and the California Rules of Professional Conduct, which constitute causes for discipline in these matters.

I. Facts.

State Bar Court Case Number 06-O-13474

1. Respondent Edwin Tolmas (Respondent) was admitted to the practice of law in the State of California on June 9, 1964, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.
2. In 2002, Jorge Hernandez (Hernandez) hired Respondent to represent him in a marital dissolution matter and to handle that matter to its conclusion.
3. On May 24, 2002, Respondent filed a petition for dissolution on behalf of Hernandez in Los Angeles Superior Court (the superior court).
4. In July 2002, Respondent prepared and filed Hernandez's declaration regarding child visitation.
5. In July 2002, Respondent obtained certain temporary orders, including orders regarding child custody and visitation, pending final judgment in Hernandez's dissolution proceedings.
6. Between July 2002 and May 5, 2004, Respondent should have performed legal services to conclude Hernandez's dissolution proceedings, including obtaining a final judgment in the proceedings.
7. Between July 2002 and May 5, 2004, Respondent did not perform any legal services to conclude Hernandez's dissolution proceedings.

8. Between July 2002 and May 5, 2004, Respondent did not obtain a final judgment in the proceedings or otherwise take any action to further the proceedings on Hernandez's behalf.
9. Between July 2002 and May 5, 2004, Hernandez did not receive any communication from Respondent.
10. On May 5, 2004, Hernandez sent a letter to Respondent informing Respondent of his dissatisfaction with Respondent's legal services and inquiring about the status of his legal matter. Also in that letter, Hernandez informed Respondent that if Hernandez did not hear from Respondent within 30 days of that letter, Respondent's services would be terminated.
11. Respondent received that May 5, 2004 letter from Hernandez, but he did not respond or otherwise provide Hernandez with a status of his legal matter.
12. On May 3, 2006, Respondent filed or caused to be filed an unsigned Request for Trial Setting with the court in Hernandez' dissolution proceedings.
13. On February 21, 2007, after being contacted by the State Bar of California, Respondent sent a letter to Hernandez by which he offered his apologies and gave assurances that there would be no further delays in Hernandez's dissolution matter. In his letter, Respondent also informed Hernandez that on February 21, 2007, he had filed or caused to be filed with the superior court another request that the case be set for trial.
14. On February 28, 2007, Hernandez sent a letter to Respondent reminding him that he had terminated Respondent's services and repeating his demand for a refund of unearned attorney's fees.

State Bar Court Case Number 07-H-10270

15. By an order filed on September 30, 2005 (the Order), the State Bar Court imposed a public reproof upon Respondent. Respondent received the Order and notice of the imposition of a public reproof with duties.
16. The Order became effective on October 21, 2005.
17. Pursuant to the Order, Respondent was required to comply with certain terms and conditions including, but not limited to, the following:
 - (a) Respondent must comply with the conditions attached to the reproof for a period of one year;

- (b) During the condition period attached to the reproof, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct;
- (c) Within 30 days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request;
- (d) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the condition period attached to the reproof. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of the reproof during the preceding calendar quarter. Respondent must also state in each report whether there are any proceedings pending against him in the State Bar Court and, if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next following quarter date and cover the extended period. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the condition period and no later than the last day of the condition period;
- (e) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the conditions attached to the reproof;
- (f) Within one year of the effective date of the reproof, Respondent must provide to the Office of Probation satisfactory proof of attendance of the Ethics School and passage of the test given at the end of that session;
- (g) Respondent must pay restitution to Charles E. Lee, Jr., in the principal amount of \$1,400, plus interest of 10 percent per annum accrued from April 9, 2003. If the Client Security Fund (CSF) has reimbursed Charles E. Lee, Jr., for all or any portion of the principal amount of \$1,400, Respondent must also pay restitution to CSF of the amounts paid, plus applicable interests and costs; and,

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- (h) Respondent must provide to the Office of Probation satisfactory proof of payment of restitution to Charles E. Lee, Jr., not later than 11 months from the effective date of the reproof.

18. Respondent did not comply with the conditions attached to his public reproof, as follows:

- (a) Respondent did not timely submit his written quarterly report which was due by January 10, 2006. Respondent did not submit that report until March 9, 2006;
- (b) Respondent did not timely submit his written quarterly reports which were due by July 10, 2006, and October 10, 2006. Respondent sent the July 10, 2006 and October 10, 2006 reports to the Office of Probation, by fascimile, on or about January 23, 2007; the Office of Probation did not receive the original reports until March 1, 2007;
- (c) To date, Respondent has not paid full restitution to Charles E. Lee, Jr., or to the Client Security Fund;
- (d) To date, Respondent has not attended Ethics School;
- (e) Respondent did not timely submit his final quarterly report which was due by October 21, 2006. Respondent sent the final quarterly report to the Office of Probation, by fascimile, on or about January 23, 2007; the Office of Probation did not receive the original final report until March 1, 2007; and
- (f) Respondent did not contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss the terms and conditions of his probation, within 30 days of the effective date of the reproof. Respondent did not meet with his assigned probation deputy until March 9, 2006.

II. Conclusions of Law.

Count One

By ceasing to perform any legal services to further Hernandez's dissolution matter or for the Hernandez's benefit, by failing to obtain a final judgment in the dissolution proceedings, and by ceasing to communicate with Hernandez from July 2002 to and including May 5, 2004, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A) of the California Rules of Professional Conduct.

Count Two

By not responding to Hernandez's written request for a status report about his case, and by not otherwise informing Hernandez about the status of his dissolution matter, Respondent failed to respond promptly to a client's reasonable status inquiries in a matter in which Respondent had agreed to provide legal services, in willful violation of California Business and Professions Code section 6068, subdivision (m).

Count Three

By filing or causing to be filed at least one request for trial setting on behalf of Hernandez, after his services had been terminated, Respondent appeared without authority as attorney for a party to an action or proceedings, in willful violation of California Business and Professions Code section 6104.

Count Four

By not timely submitting his quarterly reports to the Office of Probation by July 10, 2006, October 10, 2006 and January 10, 2006, by not paying full restitution to Charles E. Lee, Jr., or to the Client Security Fund within 11 months of the effective date of his reproof, by not attending Ethics School by October 21, 2006, by not submitting his final quarterly report to the Office of Probation by October 21, 2006, and by not contacting the Office of Probation or otherwise scheduling a meeting with his assigned probation deputy within 30 days of the effective date of his reproof, Respondent failed to comply with conditions attached to his public reproof, in willful violation of rule 1-110 of the California Rules of Professional Conduct.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A(6), was May 17, 2007.

WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY

The parties hereby waive any variance between the Notice of Disciplinary Charges filed on March 7, 2007, and the facts and conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges relating to cases which are the subject matters of this stipulation.

(Do not write above this line.)

In the Matter of EDWIN TOLMAS	Case number(s): 06-O-13474 and 07-H-10270 (cons.)
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts and Conclusions of Law.

Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Program, upon Respondent's successful completion of or termination from the Program, this Stipulation will be filed and the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Statement Re: Discipline shall be imposed or recommended to the Supreme Court.

<u>6/18/07</u> Date	<u>Edwin Tolmas</u> Respondent's Signature	<u>Edwin Tolmas</u> Print Name
<u> </u> Date	<u>Pro Per</u> Respondent's Counsel Signature	<u> </u> Print Name
<u>JUNE 20, 2007</u> Date	<u> </u> Deputy Trial Counsel's Signature	<u>Eric H. Hsu</u> Print Name

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In the Matter Of EDWIN TOLMAS	Case Number(s): 06-O-13474 and 07-H-10270 (cons.)
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ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulation as to facts and conclusions of law is APPROVED.
- The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- All court dates in the Hearing Department are vacated.

Page 2, (6); is modified: As of March 18, 2008, Respondent has been advised in open court of any and all pending investigation/proceedings not resolved by this stipulation, except for criminal investigations.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 135(b) and 802(b), Rules of Procedure.)

3/18/08

Date



Judge of the State Bar Court
DONALD F. MILES

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on April 21, 2010, I deposited a true copy of the following document(s):

DECISION AND ORDER SEALING DOCUMENTS AND FILING STIPULATION

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

in a sealed envelope for collection and mailing on that date as follows:

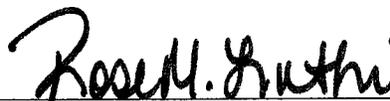
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

EDWIN TOLMAS, ESQ.
523 W 6TH ST #625
LOS ANGELES, CA 90014

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

MONIQUE MILLER, ESQ., Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 21, 2010.



Rose Luthi
Case Administrator
State Bar Court